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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,446	04/20/2004	Kazumi Minoguchi	0051-0226PUS1	2718
2292 7590 01/02/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			EXAMINER SEVERSON, RYAN J	
			ART UNIT 3731	PAPER NUMBER
			NOTIFICATION DATE 01/02/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

## Office Action Summary

Application No.

10/827,446

Applicant(s)

MINOGUCHI ET AL.

Examiner

Ryan Severson

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 and 11-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 7/28/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election of species 2 (claims 6-10) in the reply filed on 15 October 2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 1-5 and 11-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 15 October 2007.

### *Claim Rejections - 35 USC § 112*

3. Claims 6-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In lines 7-8 of claim 6, applicant recites the limitation "the first tooth-hardening member in parallel to the second tooth-hardening member." However, in the elected species, the second member is circumferentially disposed about the first member, and they are in no way parallel. Therefore, it is unclear what applicant is intending to claim.

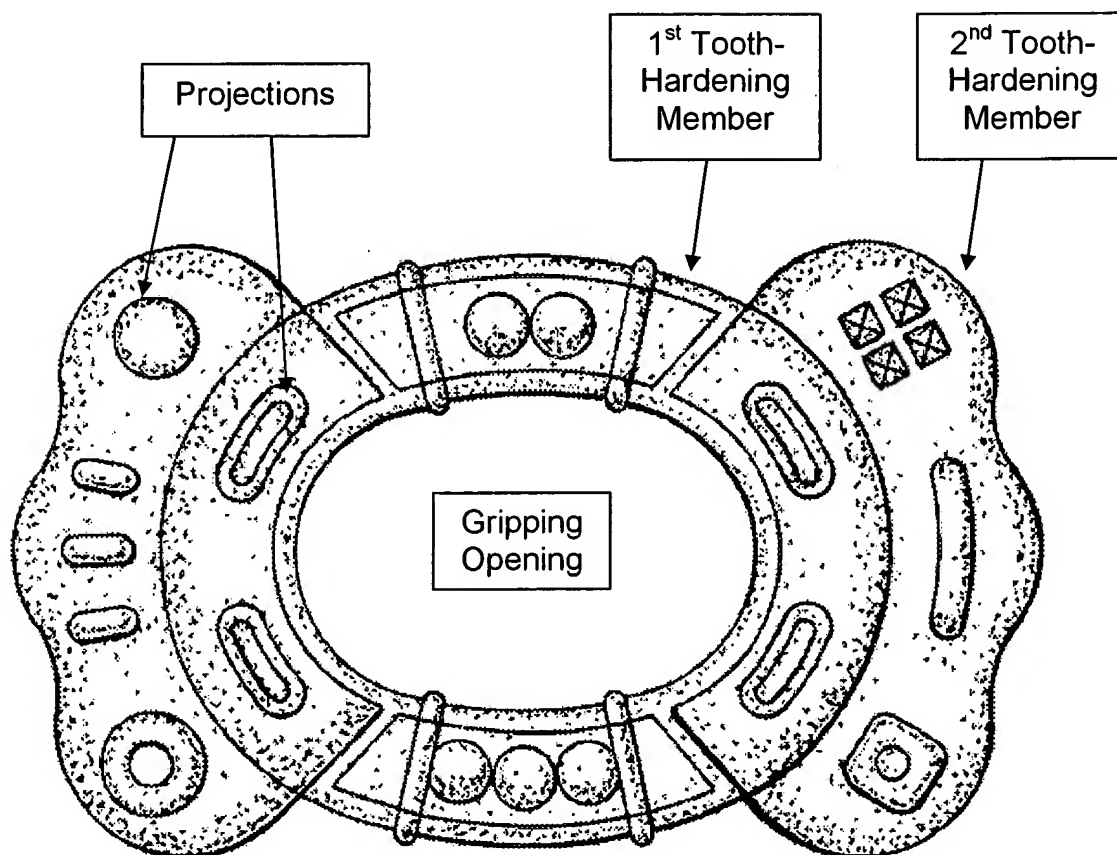
***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakata et al. (Des. 368,965) in view of Suchowski et al. (6,305,326).** Nakata et al. (hereinafter Nakata) reference discloses the apparatus substantially as claimed, including first and second tooth-hardening members each have projections and a gripping opening (see annotated figure 2 below). However, Nakata reference does not disclose the first and second tooth-hardening members have different hardnesses. Attention is drawn to Suchowski et al. (hereinafter Suchowski) reference, which teaches different portions of a chew toy/device may be made of materials of different hardnesses to allow greater durability of the device while still having a soft chewing section for increased chewing pleasure (see column 1, lines 33-41 and column 2, lines 33-42). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have the first tooth-hardening member of Nakata reference made of a harder material than the second tooth-hardening member, as taught by Suchowski reference, for increased chewing pleasure.

*Nakata et al. Figure 2*



6. **Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakata et al. (Des. 368,965) in view of Suchowski et al. (6,305,326) as applied to claim <sup>6</sup>7 above, and further in view of Monaco (2,532,116).** The combination of Nakata and Suchowski references does not specifically disclose colored balls inside an opening with a transparent cover. Attention is drawn to Monaco reference, which teaches the use of colored balls (18) inside an opening with a transparent cover on a teething device to enhance the entertainment value of the device to the child. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include an opening with colored balls in the device of the combination of Nakata and Suchowski references, as taught by Monaco reference, to enhance the entertainment value of the device to the child.


7. **Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakata et al. (Des. 368,965) in view of Suchowski et al. (6,305,326) and Monaco (2,532,116) as applied to claim 7 above, and further in view of Ripley (1,117,093).** The combination of Nakata and Suchowski reference does not disclose holes in the transparent cover. Attention is drawn to Ripley reference, which teaches holes or openings can be formed in a member that contains balls to increase the noise created by the balls tumbling in the open space to enhance the entertainment value of the device to the child. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the openings of Ripley reference with the cover of the combination of Nakata and Suchowski references to enhance the entertainment value of the device to the child by creating more noise.

**Conclusion**

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan Severson whose telephone number is (571) 272-3142. The examiner can normally be reached on Monday - Friday 9:00 - 5:30.
9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

R.S.

Ryan Severson  
December 14, 2007

  
Todd E. Manahan  
SPE 3731